

**United States Department of Labor
Employees' Compensation Appeals Board**

L.N., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Francisco, CA, Employer**

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**Docket No. 17-0662
Issued: July 12, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 1, 2017 appellant filed a timely appeal from a September 22, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated September 24, 2015, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 12, 2015 appellant, then a 38-year-old labor custodian, filed an occupational disease claim (Form CA-2) alleging that on September 28, 2014 he first realized that his

¹ 5 U.S.C. § 8101 *et seq.*

depression and anxiety were due to stress from dealing with an OWCP claims examiner regarding a work injury. He stopped work on April 13, 2015.

In support of his claim, appellant submitted a report dated May 6, 2015 from Dr. Christina Yu Ting Wang, a Board-certified occupational medicine physician, who diagnosed left shoulder sprain and abdominal muscle strain. Dr. Wang noted that appellant felt stressed regarding difficulties surrounding the processing of his FECA claim.

On May 21, 2015 Dr. John Lane Hall, a specialist in internal medicine, provided examination findings and diagnosed left shoulder sprain and abdominal muscle strain. He released appellant to return to work with restrictions.

By letter dated June 9, 2015, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised regarding the medical and factual evidence required to establish his claim and afforded him 30 days to provide this information.

In response to OWCP's request, appellant submitted progress reports from Dr. Wang dated May 6, and June 3 and 30, 2015 regarding his left shoulder and abdomen conditions and his work restrictions.

By decision dated September 24, 2015, OWCP denied appellant's claim. It found that he had failed to establish the factual portion of his claim. OWCP explained that dissatisfaction with the handling of his claim by OWCP was not a compensable factor of employment.

On September 12, 2016 OWCP received appellant's request for reconsideration and narrative statement. In a September 6, 2016 statement, appellant attributed his anxiety and depression to the pressures from OWCP in processing his FECA claim, 10 months of lost wages due to his inability to work, the pain from his injury, and bankruptcy as a result of being disabled for work due to his injury.

By decision dated September 22, 2016, OWCP denied reconsideration. It found that appellant's statement was insufficient to warrant a merit review as it failed to address the underlying issue in his claim, *i.e.*, a compensable factor of employment.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received by OWCP within one

² *Id.* Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

³ 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-0218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁵

ANALYSIS

By decision dated September 15, 2015, OWCP denied appellant's emotional condition claim because he had failed to establish any compensable employment factors. It denied appellant's reconsideration request, without a merit review, in a September 22, 2016 decision.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant did not advance a relevant legal argument not previously considered. On September 12, 2016 OWCP received appellant's request for reconsideration and his narrative statement. Appellant attributed his anxiety and depression to issues related to the processing of his claim, his bankruptcy, and lost wages for 10 months due to his inability to work due to his employment injury. As noted, the Board does not have jurisdiction over the merits of the case. This statement does not demonstrate a legal error by OWCP or present a new and relevant legal argument. Dissatisfaction with FECA process is not a compensable factor of employment absent error or abuse by the employing establishment in the processing of the claim.⁶ This is a factual question.

The underlying issue in this case is whether appellant submitted sufficient evidence to establish any compensable employment factors. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence not previously considered.⁷ However, appellant did not submit any relevant and pertinent new factual evidence establishing any compensable work factor.

The Board finds, therefore, that appellant's statement in support of reconsideration did not establish legal error on a specific point of law or advance a relevant legal argument not previously considered. Furthermore, appellant also failed to submit any relevant or pertinent new evidence not previously considered.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal appellant requests that the Board review his medical records regarding his pain and loss. He also argues that FECA system is broken. As noted above, the Board lacks jurisdiction to review the merits of this case.

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b). *See Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁶ *See C.S.*, Docket No. 10-840 (issued April 25, 2011).

⁷ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 22, 2016 is affirmed.

Issued: July 12, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board